



October 28, 2004

Mr. Arthur L. Williams, Director
Louisville Metro Air Pollution Control District
850 Barrett Avenue
Louisville, Kentucky 40204

Re: Comments on STAR Program

Dear Mr. Williams:

Established in 1911, Associated Industries of Kentucky ("Association") is the Commonwealth's largest and oldest industrial trade association. Associated Industries of Kentucky's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to economic growth, and to increase understanding among policymakers, the media, and the general public about the importance of manufacturing to America's economic strength.

Many of our Jefferson County members will be impacted by the STAR Program that has been proposed by the Louisville Metro Air Pollution Control District ("LMAPCD"). Associated Industries of Kentucky has adopted the following regarding environmental policies:

- (a) they should consider cost-benefit relationships;
- (b) they should consider technical and economic feasibility; and
- (c) they must be based on sound science.

The Association's initial review and discussions with our membership indicates that the program has not adequately considered the cost-benefit relationships associated with the program, the technical and economic feasibility of the program, and it does not appear to be based on sound science. For these reasons, we believe that the program should be reconsidered, taking into account the principles stated above, which should form the basis of any regulatory program.

The goal of the STAR Program is laudable, i.e., to reduce the exposure of individuals to toxic chemicals that may exceed safe levels. The program was prompted by a study in West Louisville that indicated that 18 toxic chemicals were identified in the ambient air at unhealthful levels. It was anticipated that the program to address this study would focus on the 18 identified chemicals; however, the entire STAR Program regulates closer to 200 chemicals and is not limited to the 18 that have been alleged to be of concern. Additionally, the program imposes burdens on other operations of manufacturers that have little or no relationship to the emission of toxic air pollutants. Thus, while the program is entitled "Strategic Toxic Air Reduction," it does not appear to be "strategic" and, in large part, will not produce "reductions" despite a severe burden being placed upon both small and large manufacturing operations.

Many of our members have already provided comments to the LMAPCD on the proposed regulations. Rather than attempt to make a line-by-line commentary on the regulations during this informal period, the Association has highlighted the major concerns of our members.

The Regulatory Development Process

After the release of the final West Jefferson County Risk Assessment, the LMAPCD resolved to develop a program to address the chemicals of concern that were identified in the report. Many of the stakeholders in Jefferson County, including members of the Association, offered to assist in assembling a program that would address the targeted chemicals. Nevertheless, the program was developed without the input of any outside stakeholders, including environmentalists, industries and even Board members who have belatedly objected to the process.

Associated Industries of Kentucky has repeatedly demonstrated its ability and willingness to be part of a consensus building process. Most recently, we worked with the environmental community, state regulatory officials, and many other groups during the formulation of the Kentucky Brownfields program. A similar process would have greatly benefited the Jefferson County community had it been undertaken at the outset of this endeavor. We believe that it is not too late to adopt this consensus building process to develop a regulation that will target emissions of concern to Jefferson County residents. The Association also believes that these regulations have implications beyond the jurisdiction of LMAPCD and that others outside the district should be engaged in further study and development of the regulations.

Parts Of The Program Will Impact Businesses With No Toxic Emissions

The scope of the proposed STAR Program greatly exceeds what is necessary to address the toxics identified in the West Jefferson County Risk Assessment. As an example, the LMAPCD has re-written Regulation 1.07 related to excess emissions during startup, shutdowns and malfunctions and created a new Regulation 1.20, allowing the LMAPCD to require a

company to implement a malfunction prevention program. These two regulations have applicability to every permitted facility in Jefferson County. In addition, the LMAPCD has proposed to remove provisions of the regulations that provided a defense to enforcement for excess emissions during startup, shutdowns, and malfunctions, which have been longstanding defenses under LMAPCD, state, and federal law. Furthermore, significant burdensome reporting requirements and follow-up reports are being proposed. These requirements provide a significant amount of work for plant personnel, at a time when manufacturers have been reducing staff to compete in an ever tightening global market. Most significantly, none of these reporting features will in any way contribute to a reduction in toxic air contaminants in Jefferson County, the purported aim of the program, while increasing the paper work burden on industry.

Manufacturers Are Improperly Targeted By This Proposal

As the LMAPCD is well aware, there are many sources for the contaminants of concern that were identified in the West Jefferson County Risk Assessment. Specifically, area sources, as well as on-road and off-road mobile sources, have been identified in USEPA Region 4 studies as the sources of many of the STAR regulated contaminants in Jefferson County. Additionally, it is important to remember that the West Jefferson County Risk Assessment determined that chemicals of concern were identified at Otter Creek Park and the University of Louisville Shelby Campus above the EPA risk goals. There are no current plans to reduce emissions from any of these sources. It is clearly improper to place the burden of reducing contamination resulting from transport and mobile sources upon the shoulders of the local manufacturing community.

The Expansive Chemical List Has No Rational Basis

The STAR proposal is one instance where the LMAPCD has delivered much more than it promised. It “promised” to address the 18 chemicals of concern identified in the West Jefferson County Risk Assessment, but it has now incorporated more than 190 chemicals into the program. Most notably, the program fails to establish any *de minimis* levels for any of the toxic air contaminants that are regulated by the program. Thus, any manufacturing plant, or for that matter, even a commercial facility with a boiler that consumes coal could be subject to the regulation because of the formation of HCl during the process of combustion. This was not a concern related in the West Jefferson County Risk Assessment, but it is a reality for sources in Jefferson County. In fact, many moderate sources from the LMAPCD list will most likely have little, or no idea that they are subject to the new reporting requirements because they do not have qualified staff to inform them of this chemical reaction, let alone the means to measure the amounts or model impacts.

Other apparently insignificant sources of emissions would need to be calculated and reported under the regulation as it is currently written. As an example, some manufacturing plants use laser printers to label boxes for their products. The ink used in these processes may contain some toxic air contaminants on the LMAPCD’s list. While it is likely that the volume of the ink released during a year would be substantially less than one pound, under the current

proposed regulations, it would be the facility's obligation to report and to model the impacts that this printer has on the ambient air in Jefferson County. It is difficult to conceive that this was the intent of the Board when it read the West Jefferson County Risk Assessment and determined it would devise a program to improve the health of Jefferson County residents.

The Proposal Will Further Paralyze Permit Modifications In Jefferson County

The proposed regulation will place additional burdens on existing businesses that intend to modify or expand their businesses, as well as place new burdens on all companies, not just the 173 identified to pay the new fees, for any process change, including a change in material at an existing business. The definition of "modification" has been expanded, thus bringing more operational changes for review before the Agency. This is not a bright prospect for permitted sources in Jefferson County.

At the current time, the LMAPCD is telling permittees that the review of a modification, even for replacement equipment, will take as long as 12 to 18 months to complete. Despite this, the LMAPCD insists on requiring construction permits for even equipment replacements that will reduce emissions in Jefferson County. Currently, there are at least three companies in Jefferson County that have proposed to replace existing pollution equipment with new, better designed and operating equipment, that have been unable to obtain construction permits because of the overload on LMAPCD staff. These are real pollution reductions that cannot be made because of the LMAPCD's inability to process these applications. The proposed increase in work for the LMAPCD under this new program, despite the potential new hires, will only lead to further backlogs of traditional modifications, which in turn will delay the implementation of projects that can easily be demonstrated will reduce air contaminants in Jefferson County.

The Technical Provisions Of The Regulation Need More Review Time

The heart of the STAR Program is found in Regulations 5.20–Methodology for Determining Benchmark Ambient Concentration of a Toxic Air Contaminant, 5.21–Environmental Acceptability for Toxic Air Contaminants, 5.22–Procedures for Determining the Maximum Ambient Concentration of a Toxic Air Contaminant, and 5.23–Categories of Toxic Air Contaminants. As the titles to these four sections make clear, these are highly technical and, in some instances, confusing provisions that are not easily understood. As we understand these regulations, some were taken from other programs around the country, although significant portions may have been omitted when they were incorporated into the STAR Program (e.g., *de minimis* levels that are incorporated into other programs). A number of our member companies and other permitted sources in Jefferson County, as well as trade organizations, have submitted initial comments on the technical deficiencies of these proposals. We will not at this time reiterate all of those, but do wish to express our strong concern about the impact that these regulations will have on our members, many of whom have truly insignificant releases of toxic air contaminants.

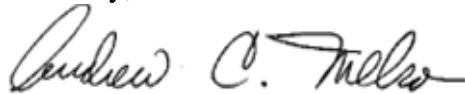
In short, these regulations require regulated companies to inventory their toxic air contaminants, model their releases of toxic air contaminants and determine the maximum ambient concentration that will be allowed for those contaminants. Many of our member companies subject to these regulations will be unable to fully understand, let alone implement, this very complex series of regulations. Even our members with environmental staff who have experience with reporting toxic air contaminants through EPCRA reporting requirements, have expressed their concern as to how they can properly comply with these regulations. As the regulations stand today, if adopted, many of our larger sources would not have the information available to provide the emissions inventory in the required time frame.. The LMAPCD is requiring companies to report on information that they have not been collecting, which is clearly inappropriate.

The LMAPCD has acknowledged that it has not prepared a cost-benefit relationship of these regulations, nor has it considered the technical and economic feasibility of the program. The only way that the LMAPCD can acquire this information is to meet with our member companies and others to discuss the impact of these proposals on each of those companies. This Association is hard pressed to understand the benefits that the LMAPCD, the community, or the environment will see from one of our member companies spending thousands of dollars to provide the LMAPCD the amount of toxic air contaminants that are released from a laser jet printer in the back of a warehouse in an industrial park. And, while it may be "technically" feasible to calculate the emissions and the maximum ambient standard, much time and money will have been wasted on an effort that would be of no value.

Associated Industries of Kentucky is fully supportive of environmental requirements that are necessary to protect human health, consider cost-benefit relationships, consider technical and economic feasibility; and are based on sound science. The Association believes that the LMAPCD should, prior to finalizing any local air toxics program, convene a series of consensus building meetings with all stakeholders in order to discuss this topic.

We welcome the opportunity to further discuss our concerns in this matter. Any questions you have may be addressed to Mr. Rusty Cress at (502) 875-0050 or lrc2@gdm.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew C. Meko". The signature is fluid and cursive, with the first name "Andrew" being more prominent.

Andrew C. Meko
President and CEO